

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JERMAINE GORE,

Plaintiff,

V.

TACOMA POLICE DEPARTMENT ET.  
AL.,

### Defendants.

Case No. C18-5075-BHS-TLF

**ORDER DENYING WITHOUT  
PREJUDICE MOTIONS FOR LEAVE  
TO FILE SECOND AMENDED  
COMPLAINT AND FOR COURT-  
APPOINTED COUNSEL**

This matter comes before the Court on plaintiff's motions to file a second amended complaint and for court-appointed counsel. Dkt. 14. For the reasons discussed below, plaintiff's motions are denied without prejudice.

## Motion for Leave to File Second Amended Complaint

Plaintiff moves for leave to file a second amended complaint to include additional defendants. Dkt. 14. Federal Rule of Civil Procedure 15(a)(2) provides that, where a party seeks leave to file an amended complaint “[t]he court should freely give leave where justice so requires.” Fed. R. Civ. P. 15(a)(2). Local Rule 15 further provides that,

[a] party who moves for leave to amend a pleading, or who seeks to amend a pleading by stipulation and order, must attach a copy of the proposed amended pleading as an exhibit to the motion or stipulation. The party must indicate on the proposed amended pleading how it differs from the pleading that it amends by bracketing or striking through the text to be deleted and underlining or highlighting the text to be added. The proposed amended pleading must not incorporate by reference any part of the preceding pleading, including exhibits.

**ORDER DENYING WITHOUT PREJUDICE MOTIONS  
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT  
AND FOR COURT-APPOINTED COUNSEL - 1**

1 Here, plaintiff fails to include a copy of the proposed second amended complaint with his  
2 motion and, as such, the Court is unable to properly evaluate the merits of plaintiff's request.  
3 Accordingly, plaintiff's motion is denied without prejudice. If plaintiff re-moves for leave to file  
4 a second amended complaint his motion should comply with the requirements of Local Rule 15  
5 and should explain why amendment is appropriate.

6 Furthermore, plaintiff is reminded that the proposed second amended complaint shall be  
7 presented on the form provided by the Court, must be legibly rewritten or retyped in its entirety,  
8 it should be an original and not a copy, it should contain the same case number, and it may not  
9 incorporate any part of the original complaint or first amended complaint by reference. If  
10 plaintiff seeks leave to file a second amended complaint and such request is granted by the Court  
11 the second amended complaint will act as a complete substitute for the first amended complaint,  
12 and not as a supplement. Thus, in addition to any new claims or defendants plaintiff requests to  
13 include – if the plaintiff intends to proceed against the defendants currently named in the action,  
14 he must re-allege his claim(s) against those defendants as well.

15 Any proposed second amended complaint must consist of a short, plain statement telling  
16 the Court: (1) the constitutional right plaintiff believes was violated; (2) the name of the  
17 person(s) (defendant(s)) who violated the right; (3) exactly what the individual did or failed to  
18 do; (4) how the action or inaction of the individual is connected to the violation of plaintiff's  
19 constitutional rights; and (5) what specific injury plaintiff suffered because of the individual's  
20 conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976).

## Request for Court-Appointed Counsel

22 The Court also notes that plaintiff's motion includes a request that the Court assign him  
23 counsel to assist him in these proceedings. Dkt. 14, at 2.

1           No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*  
2 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see also United States v. \$292,888.04 in U.S.*  
3 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is  
4 discretionary, not mandatory.”). In “exceptional circumstances,” the Court may appoint counsel  
5 for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1)). *Rand v. Roland*, 113 F.3d 1520,  
6 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998).

7           To decide whether exceptional circumstances exist, the Court must evaluate both “the  
8 likelihood of success on the merits [and] the ability of the petitioner to articulate his claims *pro*  
9 *se* in light of the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d  
10 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A  
11 plaintiff must plead facts that show he has an insufficient grasp of his case or the legal issue(s)  
12 involved, as well as an inadequate ability to articulate the factual basis of his claim. *Agyeman v.*  
13 *Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). That a *pro se* litigant may  
14 be better served with the assistance of counsel is not the test. *Rand*, 113 F.3d at 1525.

15           Here, plaintiff presents no facts to show he is likely to succeed on the merits, that he has  
16 an insufficient grasp of his case or the legal issues involved, or that he is unable to articulate the  
17 factual basis of his claim. The Court notes that plaintiff has successfully filed a serviceable  
18 complaint and that his filings demonstrate an adequate ability to explain the factual and legal  
19 aspects of his claims. Furthermore, at this early point in the case it is difficult to assess the  
20 likelihood of success on the merits or whether the issues in this case are necessarily complex.  
21 Accordingly, plaintiff fails to demonstrate at this point that he is unable to present his claims to  
22 this Court without counsel. As such, plaintiff’s motion for court-appointed counsel is denied  
23 without prejudice.

## Conclusion

Plaintiff's motions for leave to file a second amended complaint and for court-appointed counsel (Dkt. 14) are DENIED without prejudice.

**The Clerk is directed to send plaintiff the appropriate forms for filing a 42 U.S.C. § 1983 civil rights complaint and for service, a copy of this Order and the Pro Se Information Sheet.**

Dated this 20th day of November, 2018.

Theresa L. Fruke

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Theresa L. Fricke  
United States Magistrate Judge